APPENDIX A

We discuss herein the findings of the School Board which declared to be "false", six statements in the Open Letter. The respective paragraphs of the Open Letter and of the Findings are throughout referred to by number. (The Letter and the Findings are reprinted as Appendices A and B respectively of our opening brief.)

The Board found, contrary to par. 4 of the Open Letter, that "Mr. Moore [the custodian] was not required to do technical electrical work beyond Mr. Moore's ability". (Finding #11.) Only the Letter itself (Exhibit 7) is cited in support of this finding. But a member of the Fire Department testified that he witnessed a fire inspection at which the Fire Chief countermanded a direction of the Superintendent and instructed Mr. Moore not to "touch electrical work—that has to be done by a qualified electrician—it's a fire hazard if it's done any other way." He testified further that Mr. Moore protested that he would lose his job because the Superintendent wanted him to do electrical work. (App. p. 371.) Mr. Moore himself had given a statement to that effect. (App. pp. 390-392.) There was no contrary evidence.

Paragraph 5 of the Open Letter began, "On different occasions threatening to 'get one third of the faculty this year, and half of the remainder next year' ". The School Board chose to interpret this statement as being based on an allegation by Watts regarding a conversation between himself and the Superintendent, and found it to be false by discrediting Watts. (Finding #12.) But the statement is not so limited. There was testimony by a parent that the Superintendent had told her that "probably the heads would roll of about ⅓ of the teachers in the school system" (App. p. 354), and by another citizen that he heard Fabricius say that he "had to clear out about 80% of them" in his previous position "and it looks like I'm going to have to do the same thing here." (App. p. 372.)

Contrary to the implications of Finding #13, the last sentence of Par. 5 referred to the threat of loss of jobs and homes of the teachers generally. Of course, even if the Open Letter had said that Mr. Brown was discharged without legitimate cause, this would have been a matter of opinion, not fact.

Paragraph 6 of the Open Letter was likewise a statement of opinion, carefully qualified as such, by the word "seems" because the authors were not certain of the meaning of the regulation (App. pp. 395-396). Yet the Board found that "the statement in Item 6 * * * that the [Conder] incident seemingly constituted a violation of the intent of the rules and regulation affecting school transportation was false". While petitioners' interpretation of the regulation may have been mistaken, how could the School Board find that they made a false assertion that it "*seems*" to have been violated? (Pet. br. p. 2a, emphasis in Open Letter.)

As Fabricius acidly commented, "Mr. Blue happened to be conveniently present" (App. p. 275) during the former's altercation with Mr. Smith, which was the subject of Par. 8 and Finding #14. Blue testified at the first hearing that he heard Fabricius talk to Mr. Smith "in a peremptory and threatening manner in the presence of a pupil" (R. April 8, 1960, pp. 65-66),* and that he was prepared to explain further if respondents' counsel were to inquire. Counsel never made the effort, although examining him extensively at the second hearing where Blue adopted his prior testimony on this point (App. pp. 450, 452) and was subjected to rigorous cross-examination. He again referred to this incident when asked to explain why he had not presented some of his objections to the Superintendent:

> MR. WALTON: I believe you were also asked why didn't you present some of these extenuative things to Mr.

* The record of this earlier hearing was incorporated into the record of the November 1960 hearing by consent of both parties. (App. p. 453).

Fabricius personally, rather than seeking to go directly to the Board as was done? Can you answer that question?

MR. BLUE: I experienced—witnesse[d] a situation in which a man came to him with a grievance.

MR. WALTON: Who?

MR. BLUE: Mr. Jerry Smith. I didn't relish the thought of going through the same sort of thing myself, that of being spoken to in a peremptory tone, in a threatening manner being accused of things before I even had the opportunity of explaining, which was essentially the Smith situation. (App. p. 489; see also, p. 479.)

The School Board made no finding that it disbelieved Blue.

Paragraph 9c refers to the loss of their jobs by three teachers, under circumstances which were developed at some length on the record (App. pp. 393-395, 424-427). The record also shows that the positions of Messrs. Smith and Swick had been declared vacant. This was one of the matters which the SDTA sought to correct (see Par. 2 of the conclusion of the Open Letter, Pet. br. p. 4a) and which Watts raised at the May 28 meeting with the Board. (App. p. 245.) Thus the Board itself knew that these two teachers would have preferred to stay. The teachers had reason to believe that Conder's resignation was provoked. As Blue put it, "it seemed that the discharge of Mr. Conder was something that could have been handled administratively without sacrificing a good man to the system" (App. p. 390), all the more since Conder was apparently an outstanding and popular teacher (App. pp. 394, 440). The statement that they were "driven out", though declared by the Board to be false (Finding #15) may well have been true, and at worst is in the gray area between fact and opinion.